

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 698 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO.
 2. To be referred to the Reporter or not? NO.
 3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.
 5. Whether it is to be circulated to the Civil Judge? NO.
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SANJAY PRABHUDAS CHRISTIAN

Versus

STATE OF GUJARAT

Appearance:

MR BB NAYAK for MR MUKESH R SHAH for Petitioner
MR KP RAVAL APP for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/02/99

ORAL JUDGEMENT

1. Heard learned counsel Mr. B.B.Nayak for Mr. M.R.Shah for the petitioner and learned A.G.P. Mr. K.P.Raval, for the respondent-State.
2. Rule. Learned A.P.P. Mr. K.P.Raval waives service of notice of Rule for and on behalf of the respondent-State.
3. The present petitioner-original accused No.3 has filed the present Criminal Revision Application against the judgment and order dated 1-12-98, passed by the learned Addl. Sessions Judge, Panchmahals at Godhra in

Criminal Appeal No.31 of 1998 whereby the learned Addl. Sessions Judge has confirmed the judgment and order dated 11-6-98, passed by the learned Chief Judicial Magistrate, Godhra, Dist : Panchmahals in Criminal Case No.4850 of 1991, whereby the present petitioner-original accused No.3 came to be convicted for various offences.

4. The brief facts giving rise to the present Revision Application are as under :

That the P.S.I., "D" Staff, Godhra, Dist : Panchmahals had filed one complaint against the present petitioner, his mother and two other accused, under Section 332, 338, 352, 186 and 114 of the Indian Penal Code and Section 135 of the Bombay Police Act. Thereafter, the Investigating Officer started the investigation into the matter and after investigation filed charge sheet against the present petitioner, his mother and two other accused in the court of learned Chief Judicial Magistrate, and the same came to be registered as Criminal Case No.4850 of 1991 and on 21-5-92 the learned Chief Judicial Magistrate framed the charge against the present petitioner, his mother and two other accused. The accused pleaded not guilty and claimed to be tried, and therefore, the prosecution in order to prove the case against the accused examined eight witnesses and also produced documentary evidence. After hearing the learned counsel for the respective parties, the learned Chief Judicial Magistrate, Godhra, Dist : Panchmahals, acquitted the accused No. 1-Sunil Prabhudas Christian, accused No.2-Taraben, widow of Prabhudas Muljibhai and accused No.4-Raju Prabhudas Christian and convicted the present petitioner-original accused No.3 namely Sanjay Prabhudas Christian under Sections 332 and 186 of IPC and Section 135 of the Bombay Police Act.

5. Against the said order dated 11-6-98, passed by the learned Chief Judicial Magistrate, Godhra, Panchmahals in Criminal Case No.4850 of 1991, the present petitioner has preferred Criminal Appeal No.31 of 1998 before the learned Addl. Sessions Judge, Panchmahals at Godhra. The learned Addl. Sessions Judge, Panchmahals at Godhra vide his judgment and order dated 1-12-98 dismissed the said appeal preferred by the present petitioner and confirmed the judgment and order passed by the learned Chief Judicial Magistrate.

6. Against the above concurrent judgment and orders, the present petitioner-original accused No.3 has filed this Criminal Revision Application on various grounds.

In the said petition firstly notice was issued and even record and proceedings was also called for. I have heard learned counsel Mr. B.B.Nayak for Mr. M.R.Shah for the petitioner and learned A.G.P. Mr. S.A.Pandya for the respondent-State. At the end of the arguments, learned counsel Mr. B.B.Nayak for the petitioner has mainly argued that notification under Section 135 of the Bombay Police Act is not properly proved and prosecution has failed to prove the offence against the present petitioner and others. He has also argued that the sentence which has been imposed for the offence under Section 135 of the Bombay Police Act higher. He has also argued that even if we accept the notification as it is and where it is, then also the prosecution failed to prove the charge under Section 135 of the B.P.Act against the present petitioner. He has also argued that no alleged mudamal has been recovered from the present petitioner or from the scene of offence. So, according to him, the prosecution has failed to prove the link of the petitioner with the crime and no ingredients of Section 135 (1) of B.P.Act is proved against the petitioner.

7. Learned counsel for the petitioner has drawn my attention to the the notification Exh.51 which came to be issued by the Addl. District Magistrate, Panchmahals, Godhra on 4-7-91 and he has drawn my attention to clause (G) of the said notification which shows that from 7-6-91 to 27-7-91 (both days inclusive) the persons of Panchmahals Districts are restrained from carrying stone or any other substance which can be thrown or push or such an instrument by which the same can be thrown and relying on the same he has argued that it is not the say of the prosecution that the present petitioner was carrying stone in his possession or he was having stone with him at the relevant time, and therefore, there is no breach of clause (G) of the said notification, and therefore, the conviction which has been imposed for the offence under Section 135 of the Bombay Police Act is absolutely illegal and for the said argument even learned A.P.P. Mr. K.P. Raval has also no answer. I have also gone through the clause (G) of the Exh.51 and I am in agreement with the arguments made by learned counsel for the petitioner to that effect. Therefore, I am of the view that the conviction imposed for the offence under Section 135 of the Bombay Police Act is not tenable and required to be quashed and set aside. Looking to overall facts of the case and the fact that the petitioner is in jail since last more than two months, if the sentence imposed on the petitioner for the offence under Section 135 of the B.P. Act is quashed and set aside and if the punishment for the offence under Section 332 of the IPC

is modified upto upto 2 1/2 months instead of 3 months, then the interest of justice would be served. Hence, I pass the following order.

8. The punishment imposed on the petitioner for the offence under Section 135 of the Bombay Police Act is hereby quashed and set aside and the punishment imposed for the offence under Section 332 of the Indian Penal Code is modified to the effect that the petitioner will have to undergo S.I. for 2 1/2 months instead of S.I. for 3 months. Rest of the order of punishment shall remain in operation.

9. Subject to the aforesaid modification, the petition is partly allowed. Rule made absolute to the aforesaid extent. D.S.permitted.

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mithabhai